

Complaint

Mr L has complained that Ikano Bank AB (publ) (“Ikano”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr L bought a condensing boiler for his home in 2021. The purchase was funded by a loan from Ikano, and that business is therefore liable for the acts and omissions of the supplier under the relevant legislation. In this case, Mr L alleges that the supplier misled him into believing that the boiler came with a 10-year manufacturer's warranty – which it didn't. The manufacturer informed him that the particular boiler he was sold, only came with a 2-year manufacturer's guarantee – which is in place. Mr L is still within the 2-year guarantee period. The supplier informed him that it had agreed a special 10-year warranty with the manufacturer and would arrange for that to be provided but has since gone into liquidation. Mr L feels the supplier intentionally misled him about the warranty to obtain his business as he bought the boiler mainly due to the warranty it came with.

Ikano agreed that the supplier failed to provide him with a 10-year warranty which was offered as part of the contract and accepted his section 75 claim. It offered to reduce his loan balance by the cost of purchasing 9 years of annual like for like warranties. It said an annual like for like warranty would cost around £242, so it offered £2,178 (£242 multiplied by 9). It said it ought to have only offered 8 years of payments (as Mr L had been given 2-year warranty by the manufacturer) but offered 9 in error. However, as 9-years had been offered, it was willing to stand by its offer.

Mr L was happy with how Ikano had formulated the likely costs of the annual warranty but felt his credit agreement should not only be reduced by this much but that interest should also be adjusted so he didn't pay any interest on the £2,178 portion of the loan. He then wanted to come to an arrangement with Ikano to repay the remaining balance, less the payments he'd already made to date.

Mr L's complaint was considered by one of our investigators. She thought that Ikano should not only reduce the cost of the system by £2,178, but it should also adjust the interest charged under the credit agreement so Mr L would not pay any interest on that portion of the loan.

Ikano didn't agree. It said its offer put Mr L in the position he would have been in had the breach of contract not occurred by giving him the sum he needed to source a 9-year warranty elsewhere. He was still within the 2-year guarantee provided by the manufacturer. He said that if the supplier had still been trading, Ikano would have compelled the supplier to provide him with a warranty, rather than reduce his loan balance and corresponding interest. So it didn't agree that the loan needed to be restructured in the way our investigator had suggested.

As the complaint couldn't be resolved by our investigator, I was asked to make a decision.

At this time, Mr L pointed out that the 2-year guarantee is not the same as the 10-year warranty he was promised. He highlights that the current guarantee covers only repair and replacement, whereas the 10-year warranty offered unlimited call outs, parts and labour free of charge, as well as repair and replacement. So, he doesn't feel the 2-year guarantee provides him with the cover he was promised under the 10-year warranty – so it should not be taken into account in any redress considerations.

In my provisional decision of 10 February 2023, I set out why I minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Ikano did not respond. Mr L appeared to broadly agree with my findings but made some additional comments which I will address below.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I explained the following:

In this case the relevant law includes section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr L paid for the system with a fixed sum loan agreement, Ikano agrees that section 75 applies to this transaction. This means that Mr L could claim against Ikano, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Both Mr L and Ikano appear to agree that the supplier had sold the boiler to Mr L on the basis it came with a 10-year manufactures warranty – and that this has not been provided. So the only matter left for me to decide is how to put things right and whether the offer made by Ikano is fair in all the circumstances of the case.

Having reviewed everything both parties have provided, I intend to uphold this complaint and I'll explain why.

Firstly, I think it might be helpful to explain that where there has been a failing on the part of the business, we would expect it to offer compensation so the consumer is put in the position they would have been in had that error, failing or breach not occurred.

So in Mr L's case, Ikano needs to put him in the position he would have been in if the supplier had given him the 10-year warranty which was offered as part of the contract. This would mean that Mr L would have both the boiler and a 10-year warranty, but the full amounts due under the loan (including interest), would remain owed to Ikano.

Mr L and Ikano agree that the costs of an annual warranty is around £242, so I think Ikano's offer to pay 9 times that amount (£2,178) to be a fair amount to put matters right.

However, Ikano's offer of reducing the loan by £2,178 does not provide Mr L with the means he needs to source a warranty elsewhere. It means he would owe Ikano less, but would not give him the money now to go and purchase a warranty – which is what is needed to put him in the position he would've been in if the supplier had done nothing wrong. By reducing the loan by £2,178 without also reducing the interest on that portion of the loan, it also doesn't fully comply with Mr L's request for alternative redress – i.e. reducing the amount he pays by

the value of the warranty. So, as it stands, I don't think Ikano's offer to reduce the loan by £2,178 is fair.

So, rather than reduce Mr L's loan balance by £2,178, this amount should be given to Mr L directly, so that he is able to source a warranty elsewhere. This places him in the position he would be in if the contract had been fulfilled by the supplier in full as he will have both the boiler and the amount needed to purchase a warranty elsewhere. But the amounts due under the loan remain unaffected.

I've decided that Mr L should be given 9 years (and not 10 or 8) for the following reasons. The first-year post installation has already past and, as far as I'm aware, Mr L had no reason to use the warranty – so there was no loss due to the warranty not being in place. Additionally, while the 2-year guarantee is not the same as the warranty Mr L was promised, it does offer him some protection, and therefore is not completely valueless. However, I also need to recognise it doesn't provide Mr L with the same level of cover he was promised (and which he is paying for). So I think offering him the cost of an additional year (9 instead of 8) reaches an appropriate balance in terms of fairness for both Ikano and Mr L.

I hope both Ikano and Mr L will appreciate that in a complaint like this where a specified cost for the 10-year warranty wasn't set out in the contract, and alternative cover has been provided (albeit not like for like), it is difficult to ascertain the actual loss suffered. And putting matters right isn't an exact science.

But I think the amount Ikano has offered is a fair and reasonable way to put matters right as long as it is paid directly to Mr L. It gives Mr L the amount needed to buy equivalent cover – and it is up to him to decide what to do with it.

I would add that I understand Mr L would like the loan agreement to be restructured so he is only charged the total cost of the boiler and the warranty, less the approximate value of the warranty. However, this isn't the usual remedy offered in a case like his and Ikano hasn't agreed to it, so I don't think it's fair for me to compel Ikano to make such an offer.

If Mr L no longer requires or wants a warranty, he can pay this amount back into the loan, and my understanding is that he will only pay interest on the remaining amounts owed under the agreement for the remainder of the term anyway. If he chooses to do this, Ikano should allow this without any penalties or charges.

If, however, Ikano now wishes to make an offer to restructure Mr L's loan to reduce it by £2,178 as well as remove any interest on that portion of the loan it should let us know. As this is the remedy sought by Mr L and if he agrees to settle the matter on that basis, that can be arranged. Otherwise, I intend to direct Ikano to put matters right in the way I've suggested above.

Finally, I can see it took Ikano a significant amount of time to accept Mr L's claim. I'm satisfied that there was sufficient information available at the time that Mr L first contacted Ikano that means the claim should have been upheld and redress offered in line with what I've set out above. I direct that Ikano should pay £100 compensation for the trouble and upset caused.

Putting this right

Ikano should pay to Mr L:

1. Pay directly to Mr L £2,178 (which amounts to 9 times £242)

2. *£100 compensation for the trouble and upset caused as explained above.*

Mr L has said he feels Ikano has not cooperated in trying to resolve the complaint so felt the compensation element of my recommendation should be increased to recognise the inconvenience he has suffered in trying to resolve this complaint. Additionally, he has stopped making payments to his loan until this dispute was settled and wants assurance that any charges applied to the account will be removed.

Firstly, I've thought about Mr L's request for increased compensation for the distress and inconvenience he has suffered. But it may be helpful to explain that the ability to award compensation for inconvenience is not a punitive power used against financial business to punish them for errors. Instead, it's meant to recognise the impact of any failings on a consumer. Mr L is within the 2-year guarantee period offered by the manufacturer and he has not needed to claim – so he has not suffered any financial loss for the warranty not having been in place. Ikano did also uphold his complaint although I can see both Mr L and Ikano could not agree on how to put things right. I fully accept that Mr L has experienced inconvenience in trying to resolve matters, but I still feel £100 compensation in recognition of that to be sufficient and in line with what we would normally award.

I've thought about the concerns Mr L has raised over his credit file, charges applied to the account (if any) and the loan repayment. But I have not been able to investigate these concerns as part of this complaint. I don't know what (if any) charges have been applied and have no details of what (if any) debt collection activities Ikano has carried out. I would encourage both Ikano and Mr L to agree a way forward bearing in mind both their obligations under the loan agreement. If Mr L feels Ikano does not treat him fairly, he can raise this as a separate complaint.

In the absence of any further points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. With this in mind, I uphold this complaint and Ikano should put things right in the way I've set out below.

Putting this right

Ikano should pay to Mr L:

1. Pay directly to Mr L £2,178 (which amounts to 9 times £242)
2. Pay to Mr L £100 compensation for the trouble and upset caused as explained above.

My final decision

For the reasons explained, I uphold this complaint. Ikano Bank AB (publ) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 April 2023.

Asma Begum
Ombudsman